

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

NORMAN E. LACEY,)
)
Plaintiff,)
)
v.) **CASE NO: 3:06-CV-1145-MEF**
)
CITY OF AUBURN,)
)
Defendant.)

**OPPOSITION TO DEFENDANT'S FIFTH
MOTION IN LIMINE**

Comes now, Norman Lacey, in the above styled action and opposes the Defendant City of Auburn's Fifth Motion in Limine.

Defendant seeks an order barring consideration of liquidated damages.

In *Morgado v. Birmingham-Jefferson County Civil Defense Corps*, 706 F.2d 1184 (11th Cir. 1983), the Court explains that liquidated damages under the Equal Pay Act are not the same as punitive damage claims under 42 U.S.C. 1983 from which municipalities are immune. In that case, the Court of Appeals approved the award of liquidated damages against a government entity. *Id.*

More recently in *Cooper v. Fulton County, Georgia*, 458 F.2d 1282, (11th Cir. 2006), the Court affirmed the award of liquidated damages when a county

employer was found to violated the Family Medical Leave Act.

Wherefore premises considered, Lacey requests that the jury be allowed to consider liquidated damages in the event of a liability finding and the Defendant's Fifth Motion In Limine be denied.

Respectfully submitted,
/s/Roderick T. Cooks
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and addressed to them as follows:

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Done this the 16th day of April, 2008.

/s/Roderick T. Cooks
Of Counsel